

BOARD OF ZONING APPEALS
October 3, 2013

Mr. David Otey, as Vice-Chairman called the meeting to order at 7:00 p.m.

A. Roll Call

Present:

Mr. David Otey, Jr.
Mr. Stephen Rodgers
Mr. Ron Campana, Jr.
Mr. William Geib

Others Present:

Mr. Jason Purse, Zoning Administrator
Ms. Terry Costello, Senior Zoning Officer

Absent

Mr. Marvin Rhodes

Mr. Jason Purse gave information on the purpose of the Board of Zoning Appeals.

B. Old Business

There was no old business.

C. New Business

ZA-0008-2013 3506 Fieldcrest Court

Ms. Terry Costello presented her staff report:

Mr. and Mrs. Walter S. Felton have requested a variance to Section 24-238 (b) of the James City County Zoning Ordinance for (1) the continued placement of a deck and porch; and (2) allow for the conversion of the porch into a bedroom addition. The variance request is to reduce the rear yard setback from 35 feet to 23 feet. This property is currently zoned R-1, Limited Residential and can further be identified as JCC RE Tax Map No. 4520500007.

In 1986, plans were submitted to build a single family home on the property with the rear setback at 48 feet and the front setback at 39 feet. Neither a site plan nor drawings were attached in the records department, as part of the application. The survey dated in 1996 shows the house was actually constructed approximately 39 feet from the rear property line and 47.5 from the front property line. No building permit for the porch or deck could be located in County files.

The applicant stated that the porch and deck were already there when they purchased the home in 1996, as show on the survey provided. The survey also shows that the deck and porch encroach into the rear setback approximately 12 feet.

Notices of the application for a variance were sent to all adjacent property owners. There was also a letter signed by several property owners in the neighborhood that were in support of the variance.

An unnecessary hardship exists when the strict application of the terms of the ordinance would effectively prohibit or unreasonably restrict the use of the property. The strict application of the terms of the Zoning Ordinance does not produce an undue hardship nor does it effectively prohibit or unreasonably restrict the use of the property in this case, therefore staff cannot support the requested variance of 12 feet from the required 35 feet. Two resolutions were presented should the Board wish to grant the variance. One would allow for the continued placement of the deck and porch; and the second would allow both the continued placement of the deck and porch, and also allow for the conversion of the porch into a bedroom, with no further encroachment.

Mr. Stephen Rhodes asked for clarification as to the permit that was obtained in 1992.

Ms. Costello answered that the permit obtained in 1992 was to cover the deck and convert it into a porch.

Mr. Rhodes asked about the process to obtain this approval and whether it should have been noted then that there was no permit for the porch and deck.

Ms. Costello stated that she was unsure of what approvals were needed at the time besides the building permit approval. Since there was no change in foot print zoning approval may not have been required at the time.

Mr. Purse noted that on the permit it stated there were no alterations therefore zoning approval was most likely not required.

Mr. Rhodes stated for the record that he knew the applicants since he resided in the same neighborhood. He stated that he reviewed the information concerning conflicts of interests for public officials and he felt confident he could make an unbiased decision based on the merits of the case.

Mr. Purse also noted for the record that the County Attorney did not have any concerns with Mr. Rodgers' participation.

Mr. William Geib asked for verification that the 1996 survey was obtained when the Feltons purchased the property.

Ms. Costello stated it was.

Mr. Geib asked where it was assumed that the owners at that time knew that the deck and porch were not in compliance.

Ms. Costello stated that it would be reasonable to assume that they were aware of this situation.

Mr. Geib asked if the homeowner's association is active and if they have an architectural review committee.

Ms. Costello stated that there is an active homeowner's association but was unaware if there was any kind of architectural review committees.

Mr. Rodgers stated that this particular street, Fieldcrest Drive, is not part of the homeowner's association. Owners have the option of participating in the association. The association does have an architectural review committee.

Mr. Geib noted that there was a letter attached to the application that had several property owners who were in support of the variance. He asked if the entire community was notified and if they had any input.

Ms. Costello explained that letters are sent to the adjacent property owners only as part of the variance process. There is no requirement to send to everyone in that particular community or the homeowner's association. There is also a sign placed on the property stating that a variance application has been received.

Mr. Ron Campana asked if the addition is increasing the footprint of the deck or porch.

Ms. Costello answered that the addition will not encroach further into the back, but will come out further on the right side of the residence.

Mr. Otey questioned why this is considered an expansion.

Mr. Purse answered that it is a change of use, going from a porch into living space. This would be a discretionary interpretation.

Mr. Otey opened the public hearing

Mr. Walter Felton introduced himself as the property owner. He complimented staff on assisting him in applying for a variance. The deck and sunroom were already there when they purchased the property and it was noted on the survey. He stated that all of the home's bedrooms are located upstairs, and as he and his wife age they will need a first floor bedroom. Mr. Felton would like to remain at this residence and is very happy with the area.

Mr. Felton also stated that they are members of the homeowner's association and he had documentation that their architectural review board had approved this plan.

Ms. Felton also stated that the main objective for the addition was so that they could age in place and would not have to move. She also stated that the builder informed them that the porch was not built properly, but that it would be corrected with this application.

Mr. Otey closed the public hearing.

Mr. Geib stated that staff presented them with two proposals for variances. One was to allow for the continued placement of the deck and porch, and the other was to allow for the continued placement as

well as for the addition.

Mr. Otey felt that this was not an expansion but that this was a nonconforming use with no changes. He can support the variance to allow for the addition since it is not encroaching any further than what currently exists.

Mr. Campana agreed.

Mr. Geib stated that it was reasonable to assume that when the Feltons purchased the property that everything was in compliance with County regulations. He also noted the letter attached with the property owners in the neighborhood that supported the application and that there was no one in objection. The Feltons also obtained approval from the homeowner's association. Therefore he can support the variance to allow for the addition.

Mr. Purse wanted to clarify a previous question about expansion. He stated that the definition of a building is "any structure having a roof supported by columns or walls intended for shelter or housing." It was his interpretation that adding walls and/or columns and enclosing the porch was how the determination was made that this was an expansion.

Mr. Geib stated that he would think that this is a pretty intensive project.

Mr. Felton answered yes it would be.

Mr. Rodgers felt that it was reasonable to assume that if this was included in the closing papers that it had complied with all regulations needed.

Mr. Otey further stated that in some localities that decks, porches are not included in the building foot print.

Mr. Rodgers stated that he visited the site, and currently the porch looks like a heated living space and approving this application will not change anything.

Mr Geib made a motion to approve the variance to allow for the continued placement of the deck and porch as well as the conversion of the porch into living space.

Mr. Campana seconded to motion.

On a roll call vote the variance requests were approved 4-0.

D. Minutes

September 5, 2013

Mr. Otey asked if there were any corrections need for the minute from the September 5, 2013 meeting.

Mr. Rodgers stated that on page two and four there were a couple of sentences that needed some

punctuation, and also format changes on page two.

Mr. Rodgers made a motion to approve the minutes with changes.

Mr. Campana seconded the motion.

The minutes were approved by a voice vote 4-0.

F. Adjournment

There being no further business, the meeting was adjourned

David Otey
Vice-Chairman

Jason Purse
Secretary